



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R08-UST-2018-0827; FRL-9997-44-Region 8]

Montana: Final Approval of State Underground Storage Tank Program Revisions, Codification and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Montana's Underground Storage Tank (UST) program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of Montana's State program and incorporates by reference those provisions of the State's statutes and regulations that we have determined meet the requirements for approval. The EPA continues to retain its inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions in the State of Montana.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: *<https://www.regulations.gov>*. Follow the online instructions for submitting comments.
2. Email: *Martella.Theresa@epa.gov*.
3. Mail: Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR-RC), Land, Chemicals and Redevelopment Division, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
4. Hand Delivery or Courier: Deliver your comments to Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR-RC), Land, Chemicals and Redevelopment Division, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

Instructions: Direct your comments to Docket ID No. EPA-R08-UST-2018-0827. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at *<https://www.regulations.gov>*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit

information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. The Federal <https://www.regulations.gov> website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this action and associated publicly available materials from 8:30 a.m. to 4:00 p.m., Monday through Friday, at the following location: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, phone number (303) 312-6329. Interested persons wanting to examine these documents should make an appointment with the office at least two days in advance.

FOR FURTHER INFORMATION CONTACT: Theresa Martella, (303) 312-6329, Martella.Theresa@epa.gov. To inspect the hard copy materials, please schedule an appointment with Theresa Martella at (303) 312-6329.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Montana’s Underground Storage Tank Program

A. Why are revisions to State programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When the EPA makes revisions to the regulations that govern the Federal UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program, and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this rule?

On November 13, 2018, in accordance with 40 CFR 281.51(a), Montana submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Montana's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 Federal UST regulations and the 1988 State Program Approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. We have reviewed the State Application and determined that the revisions to Montana's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Montana program provides for adequate

enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Montana final approval to operate its UST program with the changes described in the program revision application and as outlined below in section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Montana and are not changed by this action. This action merely approves the existing State regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action, and we anticipate no adverse comment. Montana did not receive any comments during its comment period when the rules and regulations being considered were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the “Proposed Rules” section of this **Federal Register** that serves as the proposal to approve the State’s UST program revisions and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Montana previously been approved?

On March 4, 1996, the EPA finalized a rule approving the UST program that Montana proposed to administer in lieu of the Federal UST program. The State's program has not previously been codified.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each State program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR subpart B (Components of a Program Application); subpart C (Criteria for No Less Stringent); and subpart D (Adequate Enforcement of Compliance). This also is true for proposed revisions to approved State programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST program and because the EPA has confirmed that the Montana UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D after this approval.

The Montana Department of Environmental Quality (Department) is the lead implementing agency for the UST program in Montana, except in Indian country.

The Department continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as to address releases from USTs under Montana Code Annotated (MCA) (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, part 5 Montana Underground Storage Tank Act, selected provisions from sections 75-11-501, *et seq.* and part 2 Montana Underground Storage Tank Installer and

Inspector Licensing and Permitting Act, selected provisions from sections 75-11-201, *et seq.* The Montana UST Program gets its enforcement authority from the powers of the Department of Environmental Quality found in MCA sections 75-11-203(2), (3), (6), and (7); 75-11-204(1) introductory paragraph; 75-11-218 through 75-11-220; 75-11-223; 75-11-224; 75-11-232; 75-11-504; 75-11-505(1), except (1)(f); 75-11-510 through 75-11-521; 75-11-525; and 75-11-526. Under MCA 75-11-510(2)(a), an employee or agent of the Department has the authority to enter and inspect any property premises or place where regulated substances are stored at any reasonable time. In the case of a release, MCA section 75-11-510 provides employees or agents of the Department the authority to take such action as necessary, including the authority to enter any property, premises or place where an UST is located for inspection, in order to conduct sampling and to have access to records. MCA section 75-11-505(1)(c) provides the Department with rulemaking authority for corrective action. Notice of violation may be issued and penalties for noncompliance with Montana's UST Act may be assessed under MCA section 75-11-512. Additionally, Montana's enforcement program has a policy with respect to Spill Management and Reporting that relies, for enforcement purposes, on the following statutes and the administrative rules adopted thereunder: the Comprehensive Environmental Cleanup and Responsibility Act, MCA section 75-10-701, *et seq.*; the Hazardous Waste Act, MCA section 75-10-401, *et seq.*; the Solid Waste Management Act MCA section 75-10-201, *et seq.*; and, the Water Quality Act MCA section 75-5-101, *et seq.* The State also includes requirements for delivery prohibitions in the event of noncompliance as described in Administrative Rules of Montana (ARM) section 17.56.312.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, are found under MCA 75-11-505, in addition to the regulatory

provisions of ARM Chapter 17.56 Underground Storage Tanks Petroleum and Chemical Substance, as amended effective October 6, 2018; Reporting and recordkeeping requirements are found under ARM section 17.56.305. The aforementioned statutory and regulatory sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Montana and the EPA, signed by the EPA Region 8 Regional Administrator on September 25, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42, including the provision that the State will not oppose intervention under Rule 24 of the Montana Code Annotated Title 25 Civil Procedure, Chapter 20 Rules of Civil Procedure, on the grounds that the applicant's interest is adequately represented by the State and the right of aggrieved parties to be admitted as party to agency proceeding. Montana has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, revisions to a State's program must be "equivalent to, consistent with, and no less stringent" than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems deferred in the 1988 UST regulations and added, among other things, new operation and maintenance requirements, secondary containment requirements for new and replaced tanks and piping, operator training requirements, and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved State programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The Department has revised its regulations to help ensure that the State's UST program

revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Department has amended the Administrative Rules of Montana to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the State operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than Federal requirements. Montana has promulgated and is implementing its own operator training provisions under Administrative Rules of Montana section 17.56.1501, *et seq.* After a thorough review, the EPA has determined that Montana's operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Acting Chief Counsel of the Montana Department of Environmental Quality certified that the laws provide adequate authority to carry out the "no less stringent" technical requirements submitted by the State in order to meet the criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

For further information on the EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for this rulemaking.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following regulatory requirements are

considered broader in coverage than the Federal program. These regulations are not required by Federal regulation and so are implemented by the State in addition to the federally approved program:

Administrative Rules of Montana (ARM) Title 17 Environmental Quality, chapter 56 Underground Storage Tanks Petroleum and Chemical Substances, section 17.56.102(3)(e), because the State applies the provision to aboveground storage tanks (ASTs).

Sections 17.56.903(3) and 17.56.1001 are broader in scope because fees are not imposed by the Federal program.

Section 17.56.402(1)(a)(iii) is broader in scope because the State regulates farm and residential tanks used for storing motor fuel for noncommercial purposes and heating oil for consumptive use, and emergency power generator tanks by requiring yearly tank gauging, which the Federal program does not require.

Sections 17.56.308, 17.56.310, 17.56.701(4), 17.56.1502(1), and subchapter 13, sections 1301 through 1309 are broader in scope because these regulations contain provisions relative to State-only operating permits not required by the Federal program.

Subchapter 14, sections 1401 through 1426, is broader in scope because the State requires State-only licensing of UST installers not required by the Federal program.

The following statutory provisions are considered broader in scope than the Federal program, as these State-only program elements do not have counterparts in the Federal program and are implemented by the State in addition to the federally approved program:

Under Montana Code Annotated Chapter 75-11:

Sections 75-11-203(1), (4), (5), (8) – (10), (14), and (15); 75-11-204(1)(a) – (h) and (2); 75-11-209 through 75-11-214; 75-11-225 through 75-11-227; 75-11-503(8) “underground

storage tank” or “tank” as it applies to aboveground storage tanks; 75-11-505(1)(f); and 75-11-509.

More Stringent Provisions

Where an approved State program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally approved program (40 CFR 281.12(a)(3)(i)).

The following regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally approved program and are federally enforceable:

Under Administrative Rules of Montana (ARM) 17.56:

At section 17.56.104, Montana subjects very small tanks (i.e., those 100 gallons or less) to standards that these small tanks are not subjected to under the Federal program, making the State requirements more stringent in this respect.

Montana does not have an analog to the following Federal requirements which allow certain USTs or UST systems to be installed without or with limited corrosion protection in specific circumstances: §§280.11(b), 280.20(a)(4), 280.20(b)(3), 280.34(b)(1). Because Montana requires that all UST systems be installed with corrosion protection, the State is more stringent than the Federal program for these requirements.

At section 17.56.304(3)(c) and (d), Montana includes additional State-only requirements regarding manufacturer warranty and the possibility of excavation of an UST for repair that are not in the Federal UST regulations; therefore, the State is more stringent than the Federal program.

At the introductory paragraphs of sections 17.56.407(1)(e) and (1)(f), Montana includes the requirement that vapor and groundwater monitoring as forms of release detection, respectively, will only be allowed until October 13, 2023. These limitations are not found in the Federal program, making Montana more stringent.

At 17.56.407(1)(d)(ii), (1)(e)(viii), (1)(f)(x), (1)(g)(i)(B) and 17.56.408(2), the State requires the use of a leak-detection console to temporarily disable pumping systems attached to tanks and piping that have failed a leak test, making the State provision more stringent than the Federal program.

At 17.56.408(3) and (4), Montana requires piping for UST systems installed after the (compliance deadline) to employ interstitial monitoring as the primary release detection method; whereas, the Federal program allows other methods, making the State provision more stringent than the Federal program.

At 17.56.409(1)(d) through (1)(f), the State has additional recordkeeping requirements associated with release detection, making the State provision more stringent than the Federal program.

At 17.56.602(1)(d), Montana requires that a free product removal report be submitted within 30 days; whereas, the Federal program allows up to 45 days for this submittal. This makes the State provision more stringent than the Federal program.

At 17.56.701(2) and 17.56-702(2), Montana has additional, more stringent closure requirements not found in the Federal program: requiring temporarily closed tanks to be emptied and not allowing the closure in place of permanently closed tanks, respectively.

At 17.56.825, Montana does not allow owners/operators of UST facilities undergoing a change in service to use this as a factor to release those individuals from financial responsibility

requirements as they would be under the Federal program, making the State provision more stringent than the Federal program.

At 17.56.1504, Montana requires that facilities' training records be kept for at least 3 years after the trained individual served as an operator at a facility, in lieu of the Federal requirements that facilities keep these records only as long as the individuals are designated as an operator; in other words, a timeline that ends when an individual leaves a particular facility.

At 17.56.205, Montana has a State-only provision that requires anti-siphon equipment in certain circumstances to prevent releases at facilities, making the State provision more stringent than the Federal program.

At 17.56.506 Montana requires an additional State-only notification for confirmed releases in addition to the federally mandated suspected release and initial abatement reporting of 280 subparts E and F, making the State provision more stringent than the Federal program.

I. How does this action affect Indian country (18 U.S.C. 1151) in Montana?

The EPA's approval of Montana's program, including this action, does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within Montana: the Blackfeet, Crow, Flathead, Fort Belknap, Fort Peck, Northern Cheyenne and Rocky Boys, any land held in trust by the United States for an Indian tribe, and any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands, even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's approved UST program into the CFR. section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of State programs in 40 CFR part 282 and incorporates by reference State regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved State program and State requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each State.

B. What is the history of codification of Montana's UST program?

The EPA has not previously incorporated by reference and codified Montana's approved UST program. Through this action, the EPA is incorporating by reference and codifying Montana's State program in 40 CFR 282.76 to include the program and the approved revisions.

C. What codification decisions have we made in this rule?

In this rule we are finalizing the Federal regulatory text that incorporates by reference the federally authorized Montana UST program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Montana rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and/or in hard copy at the EPA Region 8 office (see the **ADDRESSES** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Montana's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the Montana UST program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the proposed rule, then this codification will not take effect, and the State rules that are approved after the EPA considers public comment will be codified instead. By codifying the approved Montana program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally approved requirements of the Montana program.

The EPA is incorporating by reference the Montana approved UST program in 40 CFR 282.76. Section 282.76(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations. Section 282.76 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of EPA's codification of the federally authorized State UST Program on enforcement?

The EPA retains the authority under sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Montana, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures, rather than the State analogs. Therefore, though the EPA has approved the State procedures listed

in 40 CFR 282.76(d)(1)(ii), the EPA is not incorporating by reference Montana's procedural and enforcement authorities.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in coverage than the Federal program, those provisions are not a part of the federally approved program. As a result, state provisions which are "broader in coverage" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Title 40 CFR 282.76(d)(1)(iii) lists for reference and clarity the Montana statutory and regulatory provisions which are "broader in coverage" than the Federal program and which are not, therefore, part of the approved program being codified. Provisions that are "broader in coverage" cannot be enforced by EPA. The State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

This action only applies to Montana's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821,

Jan. 21, 2011). This action approves and codifies state requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by state law.

Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Montana’s revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or

the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s

Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, consistent with, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to

the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, State program approval, and Underground storage tanks.

Dated: August 7, 2019.

Gregory Sopkin,
Regional Administrator,
EPA Region 8.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 reads as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Add § 282.76 to read as follows:

§ 282.76 Montana State-Administered Program.

(a) *History of the approval of Montana's Program.* The State of Montana is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991, et seq. The State's program, as administered by the Montana Department of Environmental Quality (MDEQ), was approved by the EPA pursuant to 42 U.S.C. 6991c and Part 281 of this chapter. The EPA published the notice of final determination approving the Montana underground storage tank base program effective on March 4, 1996. A subsequent program revision application was approved by the EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* Montana has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, the EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, Montana must revise its approved program to adopt new changes to the Federal Subtitle I program, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Montana obtains

approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final approval*. Montana has final approval for the following elements of its program application originally submitted to the EPA and approved effective March 4, 1996, and the program revision application approved by EPA effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations—(i) Incorporation by reference*. The material cited in this paragraph is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain copies of the Montana statutes and regulations that are incorporated by reference in this paragraph from Montana Legislative Services Division, P.O. Box 201706, Helena, MT 59620-1706; Phone number: (406) 444-3064; email: LegPubSales@mt.gov; Website: <https://leg.mt.gov/statute/>, and Montana’s Secretary of State’s Administrative Rules Services, P.O. Box 202801, Helena, MT 59620-2801; Phone number: 406-444-9000; email: sosarm@mt.gov; Website: <http://www.mtrules.org/>.

(A) “EPA-Approved Montana Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program” dated May 2019.

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) The statutory provisions include:

(1) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 2 Underground Storage Tank Installer and Inspector Licensing and Permitting Act.* Sections 75-11-203(2), (3), (6), and (7); 75-11-204(1) introductory paragraph; 75-11-218 through 75-11-220; 75-11-223; 75-11-224; and 75-11-232;

(2) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 5 Montana Underground Storage Tank Act.* Sections 75-11-504; 75-11-505(1); 75-11-510 through 75-11-521; 75-11-525; and 75-11-526; and

(3) *Additional statutes.* The following additional statutes that the State relies on for its enforcement program with respect to Spill Management and Reporting: The Comprehensive Environmental Cleanup and Responsibility Act, MCA section 75-10-701 et seq.; the Hazardous Waste Act, MCA Section 75-10-401 et seq.; the Solid Waste Management Act MCA section 75-10-201 et seq.; and, the Water Quality Act MCA section 75-5-101 et seq.

(B) The regulatory provisions include:

(1) *Administrative Rules of Montana (October 6, 2018), Title 17 Department of Environmental Quality, Chapter 56 Underground Storage Tanks Petroleum and Chemical Substances.* Section 17.56.105 Variances; 17.56.309 Requirements for Compliance Inspections; 17.56.311 Permanent Non-Expiring Tags; 17.56.312 Delivery Prohibition; 17.56.508 Numbering Petroleum Releases; section 17.56.606 Public Participation; 17.56.607 Release Categorization; and 17.56.706 Requirement to empty noncompliance USTs.

(2) [Reserved]

(iii) *Provisions not incorporated by reference.* The following specifically identified statutes and rules applicable to the Montana underground storage tank program that are broader in coverage than the Federal program, are not part of the approved program, and are not incorporated by reference in this part for enforcement purposes:

(A) *Administrative Rules of Montana (October 6, 2018), Title 17 Department of Environmental Quality, Chapter 56 Underground Storage Tanks Petroleum and Chemical Substances.* Sections 17.56.102(3)(e); 17.56.308; 17.56.310; 17.56.402(1)(a)(iii); 17.56.701(4); 17.56.903(3); 17.56.1001; and 17.56.1502(1) as it applies to permits; subchapter 13, sections 17.56.1301 through 17.56.1309 and subchapter 14, sections 17.56.1401 through 17.56.1426.

(B) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 5 Montana Underground Storage Tank Act.* Sections 75-11-203(1), (4), (5), (8) – (10), (14), and (15); 75-11-204(1)(a) – (h) and (2); 75-11-209 through 75-11-214; 75-11-225 through 75-11-227; 75-11-503(8) “underground storage tank” or “tank” as it applies to aboveground storage tanks; 75-11-505(1)(f); and 75-11-509.

(2) *Statement of legal authority.* The Attorney General’s Certification, signed by the Acting Chief Counsel, Special Assistant Attorney General for the State of Montana on November 13, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on February 22, 1995, and as part of the program revision application on November 13, 2018, though not

incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on February 22, 1995, and as part of the program revision application on November 13, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the Montana Department of Environmental Quality, signed by the EPA Regional Administrator on September 25, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding an entry for Montana in alphabetical order by State to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Montana

(a) The statutory provisions include:

(1) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 2 Montana Underground Storage Tank Installer and*

Inspector Licensing and Permitting Act: Sections 75-11-203(11) “operator” 75-11-203(12) “owner”.

(2) Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 5 Montana Underground Storage Tank Act: Sections 75-11-503(4) “person”, (8) “underground storage tank” or “tank”, except as it applies to aboveground storage tanks.

(b) The regulatory provisions include:

(1) Administrative Rules of Montana (October 6, 2018), Title 17 Department of Environmental Quality, Chapter 56 Underground Storage Tanks Petroleum and Chemical Substances:

Subchapter 1 General Provisions:

Sections 17.56.101 Definitions; 17.56.102 Applicability, except 17.56.102(3)(e); 17.56.104 Tank Standards for Excluded UST Systems;

Subchapter 2 UST Systems: Design, Construction, and Installation:

Section 17.56.201 Performance Standards for New Tank Systems; 17.56.202 Upgrading of Existing UST Systems; 17.56.203 Additional Performance Standards for New Underground Piping Connected to Aboveground Tanks or to Underground Tanks with a Capacity of 660 Gallons or Less Used to Store Heating Oil; 17.56.204 Secondary Containment, Under-Dispenser Containment, and Interstitial Monitoring; 17.56.205 Anti-Siphon Requirements;

Subchapter 3 General Operating Requirements:

Sections 17.56.301 Spill and Overfill Control; 17.56.302 Operation and Maintenance of Corrosion Protection; 17.56.303 Compatibility; 17.56.304 Repairs; 17.56.305 Reporting and Recordkeeping; 17.56.306 Periodic Testing of Spill Prevention Equipment and Containment

Sumps Used for Interstitial Monitoring of Piping and Periodic Inspection of Overfill Prevention Equipment; 17.56.307 Periodic Operation and Maintenance Walkthrough Inspections;

Subchapter 4 Release Detection:

Sections 17.56.401 General Requirements for all UST Systems; 17.56.402 Requirements for Petroleum UST Systems, except 17.56.402(1)(a)(iii); 17.56.403 Requirements for Hazardous Substance UST Systems; 17.56.407 Methods of Release Detection for Tanks; 17.56.408 Methods of Release Detection for Piping; 17.56.409 Release Detection Recordkeeping;

Subchapter 5 Release Reporting, Investigation, and Confirmation:

Sections 17.56.501 General; 17.56.502 Reporting of Suspected Releases; 17.56.503 Investigation Due to Off-site Impacts; 17.56.504 Release Investigation and Confirmation Steps; 17.56.505 Reporting and Cleanup of Spills and Overfills; 17.56.506 Reporting of Confirmed Releases; 17.56.507 Adoption by Reference;

Subchapter 6 Release Response and Corrective Action for Tanks Containing Petroleum or Hazardous Substances:

Sections 17.56.601 General; 17.56.602 Initial Response and Abatement Measures; 17.56.603 Initial Site History; 17.56.604 Remedial Investigation; 17.56.605 Cleanup Plan; 17.56.608 Adoption by Reference;

Subchapter 7 Out-of-Service UST Systems and Closure:

Sections 17.56.701 Inactive and Out-of-Service UST Systems, except 17.56.701(4); 17.56.702 Permanent Closure and Changes in Service; 17.56.703 Assessing the Site at Closure or Change in Service; 17.56.704 Applicability to Previously Closed UST Systems; 17.56.705 Closure Records;

Subchapter 8 Financial Responsibility:

Sections 17.56.801 Applicability; 17.56.802 Compliance Dates; 17.56.803 Definition of Terms; 17.56.804 Incorporation by Reference; 17.56.805 Amount and Scope of Required Financial Responsibility; 17.56.806 Allowable Mechanisms and Combinations of Mechanisms; 17.56.807 Financial Test of Self-Insurance; 17.56.808 Guarantee; 17.56.809 Insurance and Risk Retention Group Coverage; 17.56.810 Surety Bond; 17.56.811 Letter of Credit; 17.56.815 Montana Petroleum Tank Release Cleanup Fund; 17.56.816 Trust Fund; 17.56.817 Standby Trust Fund; 17.56.820 Substitution of Financial Assurance Mechanisms by Owner or Operator; 17.56.821 Cancellation or Nonrenewal by a Provider of Financial Assurance; 17.56.822 Reporting by Owner or Operator; 17.56.823 Recordkeeping; 17.56.824 Drawing on Financial Assurance Mechanisms; 17.56.825 Release from the Requirements; 17.56.827 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance; 17.56.828 Replenishment of Guarantees, Letters of Credit, or Surety Bonds;

Subchapter 9 Notification:

Sections 17.56.901 Interim Notification Requirements; 17.56.902 Notification Requirements; 17.56.903 Change in Ownership, except 17.56.903(3);

Subchapter 15 Underground Storage Tank Operator Training:

Sections 17.56.1501 Operator Training Definitions; 17.56.1502 Operator Training, except the permit requirement in 17.56.1502(1); 17.56.1503 Operator Training: Authorized Providers; and Required Subjects; 17.56.1504 Operator Training: Recordkeeping; 17.56.1505 Operator Training: Third-Party Training Course Approval; and

Subchapter 16 Underground Storage Tank Systems with Field Constructed Tanks:

Section 17.56.1601 UST Systems with Field Constructed Tanks and Airport Hydrant Fuel Distribution Systems;

(c) Copies of the Montana statutes and regulations that are incorporated by reference are available from the following offices:

Statutes – Montana Legislative Services Division, P.O. Box 201706 Helena, MT 59620-1706; Phone number: 406-444-3064; e-mail: *LegPubSales@mt.gov*; Website: *<https://leg.mt.gov/statute/>*.

Regulations – Secretary of State’s Administrative Rules Services, P.O. Box 202801 Helena, MT 59620-2801; Phone number: 406-444-9000; e-mail: *sosarm@mt.gov*; Website: *<http://www.mtrules.org/>*.

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